

Representative Craig Hall proposes the following substitute bill:

VULNERABLE ADULT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Craig Hall

LONG TITLE

General Description:

This bill modifies provisions related to vulnerable adults.

Highlighted Provisions:

This bill:

- ▶ amends definitions applicable to abuse, neglect, or exploitation of a vulnerable adult;
- ▶ creates an offense for personal dignity exploitation of a vulnerable adult;
- ▶ modifies penalties;
- ▶ authorizes a court to order counseling; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-3-301, as last amended by Laws of Utah 2017, Chapter 176

76-5-111, as last amended by Laws of Utah 2011, Chapter 320



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-3-301** is amended to read:

62A-3-301. Definitions.

As used in this part:

(1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person [~~or entity~~] acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(2) "Abuse" means:

(a) knowingly or intentionally:

(i) attempting to cause harm;

(ii) causing harm; or

(iii) placing another in fear of harm;

(b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;

(c) emotional or psychological abuse;

(d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person;

or

(e) deprivation of life sustaining treatment, or medical or mental health treatment, except:

(i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

(ii) when informed consent, as defined in Section [76-5-111](#), has been obtained.

(3) "Adult" means [~~a person~~] an individual who is 18 years of age or older.

(4) "Adult protection case file" means a record, stored in any format, contained in a case file maintained by Adult Protective Services.

(5) "Adult Protective Services" means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.

(6) "Capacity to consent" means the ability of [~~a person~~] an individual to understand and communicate regarding the nature and consequences of decisions relating to the [~~person~~]

57 individual, and relating to the ~~[person's]~~ individual's property and lifestyle, including a decision
58 to accept or refuse services.

59 (7) "Caretaker" means ~~[each]~~ a person~~[, entity, corporation,]~~ or public institution that is
60 entrusted with or assumes the responsibility to provide a vulnerable adult with care, food,
61 shelter, clothing, supervision, medical or other health care, resource management, or other
62 necessities for pecuniary gain, by contract, or as a result of friendship, or who is otherwise in a
63 position of trust and confidence with a vulnerable adult, including a relative, a household
64 member, an attorney-in-fact, a neighbor, a person who is employed or who provides volunteer
65 work, a court-appointed or voluntary guardian, or a person who contracts or is under court
66 order to provide care.

67 (8) "Counsel" means an attorney licensed to practice law in this state.

68 (9) "Database" means the statewide database maintained by the division under Section
69 [62A-3-311.1](#).

70 (10) (a) "Dependent adult" means an individual 18 years old or older, who has a
71 physical or mental impairment that restricts the individual's ability to carry out normal
72 activities or to protect the individual's rights.

73 (b) "Dependent adult" includes an individual who has physical or developmental
74 disabilities or whose physical or mental capacity has substantially diminished because of age.

75 ~~[(10)]~~ (11) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

76 ~~[(11)]~~ (12) "Elder adult" means ~~[a person]~~ an individual 65 years ~~[of age]~~ old or older.

77 ~~[(12)]~~ (13) "Emergency" means a circumstance in which a vulnerable adult is at an
78 immediate risk of death, serious physical injury, or serious physical, emotional, or financial
79 harm.

80 ~~[(13)]~~ (14) "Emergency protective services" means measures taken by Adult Protective
81 Services under time-limited, court-ordered authority for the purpose of remediating an
82 emergency.

83 ~~[(14)]~~ (15) (a) "Emotional or psychological abuse" means knowing or intentional
84 verbal or nonverbal conduct directed at a vulnerable adult that results in the vulnerable adult
85 suffering mental anguish, emotional distress, fear, humiliation, degradation, agitation, or
86 confusion.

87 (b) "Emotional or psychological abuse" includes intimidating, threatening, isolating,

88 coercing, or harassing.

89 (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct
90 by a vulnerable adult who lacks the capacity to intentionally or knowingly:

91 (i) engage in the conduct; or

92 (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation,
93 or confusion.

94 ~~[(15)]~~ (16) "Exploitation" means an offense described in Subsection 76-5-111(4) or (9)
95 or Section 76-5b-202.

96 ~~[(16)]~~ (17) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
97 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
98 knowingly or intentionally.

99 ~~[(17)]~~ (18) "Inconclusive" means a finding by the division that there is not a reasonable
100 basis to conclude that abuse, neglect, or exploitation occurred.

101 ~~[(18)]~~ (19) "Intimidation" means communication through verbal or nonverbal conduct
102 which threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
103 supervision, health care, or companionship, or which threatens isolation or abuse.

104 ~~[(19)]~~ (20) (a) "Isolation" means knowingly or intentionally preventing a vulnerable
105 adult from having contact with another person, unless the restriction of personal rights is
106 authorized by court order, by:

107 (i) preventing the vulnerable adult from communicating, visiting, interacting, or
108 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
109 calls, contrary to the expressed wishes of the vulnerable adult, ~~[including]~~ or communicating to
110 a visitor that the vulnerable adult is not present or does not want to meet with or talk to the
111 visitor, knowing that communication to be false;

112 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
113 from meeting with a visitor; or

114 (iii) making false or misleading statements to the vulnerable adult in order to induce
115 the vulnerable adult to refuse to receive communication from visitors or other family members.

116 (b) ~~[The term "isolation"]~~ "Isolation" does not include an act:

117 (i) intended in good faith to protect the physical or mental welfare of the vulnerable
118 adult ~~[or an act]~~; or

119 (ii) performed pursuant to the treatment plan or instructions of a physician or other
120 professional advisor of the vulnerable adult.

121 [~~(20)~~] (21) "Lacks capacity to consent" is as defined in Section 76-5-111.

122 [~~(21)~~] (22) (a) "Neglect" means:

123 (i) (A) failure of a caretaker to provide necessary care, including nutrition, clothing,
124 shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable
125 adult, unless the vulnerable adult is able to provide or obtain the necessary care without
126 assistance; or

127 (B) failure of a caretaker to provide protection from health and safety hazards or
128 maltreatment;

129 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
130 with the degree of care that a reasonable person in a like position would exercise;

131 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
132 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
133 heating, or other services necessary to maintain the vulnerable adult's well being;

134 (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment
135 plan that causes or is likely to cause harm to the vulnerable adult;

136 (v) self-neglect by the vulnerable adult; or

137 (vi) abandonment by a caretaker.

138 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or
139 excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

140 [~~(22)~~] (23) "Physical injury" includes the damage and conditions described in Section
141 76-5-111.

142 [~~(23)~~] (24) "Protected person" means a vulnerable adult for whom the court has
143 ordered protective services.

144 [~~(24)~~] (25) "Protective services" means services to protect a vulnerable adult from
145 abuse, neglect, or exploitation.

146 [~~(25)~~] (26) "Self-neglect" means the failure of a vulnerable adult to provide or obtain
147 food, water, medication, health care, shelter, cooling, heating, safety, or other services
148 necessary to maintain the vulnerable adult's well being when that failure is the result of the
149 adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by

150 themselves, be evidence of self-neglect.

151 ~~[(26)]~~ (27) "Serious physical injury" is as defined in Section 76-5-111.

152 ~~[(27)]~~ (28) "Supported" means a finding by the division that there is a reasonable basis
153 to conclude that abuse, neglect, or exploitation occurred.

154 ~~[(28)]~~ (29) "Undue influence" occurs when a person:

155 (a) uses influence to take advantage of a vulnerable adult's mental or physical
156 impairment; or

157 (b) uses the person's role, relationship, or power;

158 (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
159 fear of a vulnerable adult~~]; or uses the person's role, relationship, or power]; or~~

160 (ii) to gain control deceptively over the decision making of the vulnerable adult.

161 ~~[(29)]~~ (30) "Vulnerable adult" means an elder adult, or ~~[an]~~ a dependent adult who has
162 a mental or physical impairment which substantially affects that person's ability to:

163 (a) provide personal protection;

164 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

165 (c) obtain services necessary for health, safety, or welfare;

166 (d) carry out the activities of daily living;

167 (e) manage the adult's own financial resources; or

168 (f) comprehend the nature and consequences of remaining in a situation of abuse,
169 neglect, or exploitation.

170 ~~[(30)]~~ (31) "Without merit" means a finding that abuse, neglect, or exploitation did not
171 occur.

172 Section 2. Section 76-5-111 is amended to read:

173 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

174 (1) As used in this section:

175 (a) "Abandonment" means a knowing or intentional action or inaction, including
176 desertion, by a person ~~[or entity]~~ acting as a caretaker for a vulnerable adult that leaves the
177 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
178 medical or other health care.

179 (b) "Abuse" means:

180 (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally

181 or knowingly placing another in fear of imminent harm;

182 (ii) causing physical injury by knowing or intentional acts or omissions;

183 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation
184 that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's
185 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the
186 health and safety of the adult; or

187 (iv) deprivation of life-sustaining treatment, except:

188 (A) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

189 (B) when informed consent, as defined in this section, has been obtained.

190 (c) "Business relationship" means a relationship between two or more individuals or
191 entities where there exists an oral or written agreement for the exchange of goods or services.

192 (d) [(†)] "Caretaker" means [~~any~~] a person [~~entity, corporation,~~] or public institution
193 that is entrusted with or assumes the responsibility to provide a vulnerable adult with care,
194 food, shelter, clothing, supervision, medical or other health care, or other necessities[~~.(ii)~~
195 ~~"Caretaker" includes] for pecuniary gain, by contract, or as a result of friendship, or in a~~
196 position of trust and confidence with a vulnerable adult, including a relative [by blood or
197 marriage], a household member, an attorney-in-fact, a neighbor, a person who is employed or
198 who provides volunteer work, a court-appointed or voluntary guardian, or a person who
199 contracts or is under court order to provide care.

200 (e) "Deception" means:

201 (i) a misrepresentation or concealment:

202 (A) of a material fact relating to services rendered, disposition of property, or use of
203 property intended to benefit a vulnerable adult;

204 (B) of the terms of a contract or agreement entered into with a vulnerable adult; or

205 (C) relating to the existing or preexisting condition of any property involved in a
206 contract or agreement entered into with a vulnerable adult; or

207 (ii) the use or employment of any misrepresentation, false pretense, or false promise in
208 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

209 (f) (i) "Dependent adult" means an individual 18 years old or older, who has a physical
210 or mental impairment that restricts the individual's ability to carry out normal activities or to
211 protect the individual's rights.

212 (ii) "Dependent adult" includes an individual who has physical or developmental
213 disabilities or whose physical or mental capacity has substantially diminished because of age.

214 [~~(f)~~] (g) "Elder adult" means ~~[a person]~~ an individual 65 years [~~of age]~~ old or older.

215 [~~(g)~~] (h) "Endeavor" means to attempt or try.

216 [~~(h)~~] (i) "Exploitation" means an offense described in Subsection (4) or (9) or Section
217 76-5b-202.

218 [~~(i)~~] (j) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
219 psychological damage, physical injury, suffering, or distress inflicted knowingly or
220 intentionally.

221 [~~(j)~~] (k) "Informed consent" means:

222 (i) a written expression by the [~~person~~] individual or authorized by the [~~person~~]
223 individual, stating that the [~~person~~] individual fully understands the potential risks and benefits
224 of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or
225 other services necessary to maintain minimum physical or mental health, and that the [~~person~~]
226 individual desires that the services be withdrawn~~[-A]~~, except that a written expression is valid
227 only if the [~~person~~] individual is of sound mind when the consent is given, and the consent is
228 witnessed by at least two individuals who do not benefit from the withdrawal of services; or

229 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,
230 heating, or other services necessary to maintain minimum physical or mental health, as
231 permitted by court order.

232 [~~(k)~~] (l) "Intimidation" means communication conveyed through verbal or nonverbal
233 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social
234 interaction, supervision, health care, or companionship, or which threatens isolation or harm.

235 [~~(l)~~] (m) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult
236 from having contact with another person, unless the restriction of personal rights is authorized
237 by court order, by:

238 (A) preventing the vulnerable adult from communicating, visiting, interacting, or
239 initiating interaction with others, including receiving or inviting visitors, mail, or telephone
240 calls, contrary to the express wishes of the vulnerable adult, [~~including~~] or communicating to a
241 visitor that the vulnerable adult is not present or does not want to meet with or talk to the
242 visitor, knowing that communication to be false;

243 (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult
244 from meeting with a visitor; or

245 (C) making false or misleading statements to the vulnerable adult in order to induce the
246 vulnerable adult to refuse to receive communication from visitors or other family members.

247 (ii) [~~The term "isolation"~~] "Isolation" does not include an act:

248 (A) intended in good faith to protect the physical or mental welfare of the vulnerable
249 adult [~~or an act~~]; or

250 (B) performed pursuant to the treatment plan or instructions of a physician or other
251 professional advisor of the vulnerable adult.

252 [~~(m)~~] (n) "Lacks capacity to consent" means an impairment by reason of mental illness,
253 developmental disability, organic brain disorder, physical illness or disability, chronic use of
254 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a
255 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
256 concerning the adult's person or property.

257 [~~(n)~~] (o) "Neglect" means:

258 (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal
259 care, or dental or other health care, or failure to provide protection from health and safety
260 hazards or maltreatment;

261 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
262 with the degree of care that a reasonable person in a like position would exercise;

263 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
264 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
265 heating, or other services necessary to maintain the vulnerable adult's well being;

266 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that
267 results or could result in physical injury or physical harm; or

268 (v) abandonment by a caretaker.

269 [~~(o)~~] (p) (i) "Physical injury" includes damage to any bodily tissue caused by
270 nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to
271 be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that
272 the tissue cannot be restored to a sound and healthy condition.

273 (ii) "Physical injury" includes skin bruising, a dislocation, physical pain, illness,

274 impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a
275 bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any
276 other physical condition that imperils the health or welfare of the vulnerable adult and is not a
277 serious physical injury as defined in this section.

278 ~~(p)~~ (q) "Position of trust and confidence" means the position of a person who:

279 (i) is a parent, spouse, adult child, or other relative ~~[by blood or marriage]~~ of a
280 vulnerable adult;

281 (ii) is a joint tenant or tenant in common with a vulnerable adult;

282 (iii) has a legal or fiduciary relationship with a vulnerable adult, including a
283 court-appointed or voluntary guardian, trustee, attorney, attorney-in-fact, or conservator; or

284 (iv) is a caretaker of a vulnerable adult.

285 ~~(q)~~ (r) "Serious physical injury" means any physical injury or set of physical injuries
286 that:

287 (i) seriously impairs a vulnerable adult's health;

288 (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

289 (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or

290 (iv) creates a reasonable risk of death.

291 ~~(r)~~ (s) "Undue influence" occurs when a person:

292 (i) uses influence to take advantage of a vulnerable adult's mental or physical
293 impairment; or

294 (ii) uses the person's role, relationship, or power:

295 (A) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
296 fear of a vulnerable adult~~[-];~~ or ~~[uses the person's role, relationship, or power]~~

297 (B) to gain control deceptively over the decision making of the vulnerable adult.

298 ~~(s)~~ (t) "Vulnerable adult" means an elder adult, or ~~[an adult 18 years of age or older]~~ a
299 dependent adult who has a mental or physical impairment which substantially affects that

300 ~~[person's]~~ individual's ability to:

301 (i) provide personal protection;

302 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;

303 (iii) obtain services necessary for health, safety, or welfare;

304 (iv) carry out the activities of daily living;

305 (v) manage the adult's own resources; or
 306 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
 307 neglect, or exploitation.

308 (2) Under any circumstances likely to produce death or serious physical injury, ~~any~~ a
 309 person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or,
 310 having the care or custody of a vulnerable adult, causes or permits that adult's person or health
 311 to be injured, or causes or permits a vulnerable adult to be placed in a situation where the
 312 adult's person or health is endangered, is guilty of the offense of aggravated abuse of a
 313 vulnerable adult as follows:

- 314 (a) if done intentionally or knowingly, the offense is a second degree felony;
- 315 (b) if done recklessly, the offense is third degree felony; and
- 316 (c) if done with criminal negligence, the offense is a class A misdemeanor.

317 (3) (a) Under circumstances other than those likely to produce death or serious physical
 318 injury, except as provided in Subsection (3)(b), any person, including a caretaker, who causes a
 319 vulnerable adult to suffer harm, abuse, or neglect^[;], or, having the care or custody of a
 320 vulnerable adult, causes or permits that adult's person or health to be injured, abused, or
 321 neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's
 322 person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as
 323 follows:

- 324 ~~(a)~~ (i) if done intentionally or knowingly, the offense is a class A misdemeanor;
- 325 ~~(b)~~ (ii) if done recklessly, the offense is a class B misdemeanor; and
- 326 ~~(c)~~ (iii) if done with criminal negligence, the offense is a class C misdemeanor.

327 (b) A violation of this Subsection (3) that is based on isolation of a vulnerable adult is
 328 a third degree felony.

329 (4) Except as provided in Subsection (5), a caretaker of a vulnerable adult commits the
 330 offense of personal dignity exploitation of the vulnerable adult if the caretaker intentionally,
 331 knowingly, or recklessly:

- 332 (a) creates, transmits, or displays a photographic or electronic image or recording of the
 333 vulnerable adult:
 - 334 (i) to which creation, transmission, or display a reasonable person would not consent;
 - 335 and

336 (ii) (A) that shows the vulnerable adult's unclothed breasts, buttocks, anus, genitals, or
337 pubic area;

338 (B) that displays the clothed area of only the vulnerable adult's breasts, buttocks, anus,
339 genitals, or pubic area; or

340 (C) that shows the vulnerable adult engaged in conduct that is harmful to the mental or
341 physical health or safety of the vulnerable adult; or

342 (b) causes the vulnerable adult to participate in an act that is highly offensive or
343 demeaning to the vulnerable adult:

344 (i) in which a reasonable person would not participate; or

345 (ii) that is harmful to the mental or physical health or safety of the vulnerable adult.

346 (5) (a) A caretaker does not violate Subsection (4)(a) if the caretaker creates, transmits,
347 or displays the photographic or electronic image or recording:

348 (i) with the consent of the vulnerable adult, if the vulnerable adult:

349 (A) is mentally and physically able to give voluntary consent to the creation,
350 transmission, or display; and

351 (B) gives voluntary consent for the creation, transmission, or display;

352 (ii) for a legitimate purpose relating to monitoring or providing care, treatment, or
353 diagnosis; or

354 (iii) for a legitimate purpose relating to investigating abuse, neglect, or exploitation.

355 (b) A caretaker does not violate Subsection (4)(b) if:

356 (i) the vulnerable adult:

357 (A) is mentally and physically able to give voluntary consent to participate in the act;
358 and

359 (B) gives voluntary consent to participate in the act; or

360 (ii) the caretaker causes the vulnerable adult to participate in the act for a legitimate
361 purpose relating to:

362 (A) monitoring or providing care, treatment, or diagnosis; or

363 (B) investigating abuse, neglect, or exploitation.

364 (6) (a) It is a separate offense under Subsection (4)(a) for each vulnerable adult
365 included in a photographic or electronic image or recording created, transmitted, or displayed
366 in violation of Subsection (4)(a).

367 (b) It is a separate offense under Subsection (4)(b) for each vulnerable adult caused to
368 participate in an act in violation of Subsection (4)(b).

369 (7) It is not a defense that the vulnerable adult was unaware of:

370 (a) the creation, transmission, or display prohibited under Subsection (4)(a); or

371 (b) participation in the act, or the nature of participation in the act, under Subsection
372 (4)(b).

373 (8) The offense of personal dignity exploitation of a vulnerable adult is:

374 (a) if done intentionally or knowingly, a class A misdemeanor; and

375 (b) if done recklessly, a class B misdemeanor.

376 ~~[(4)]~~ (9) (a) A person commits the offense of financial exploitation of a vulnerable
377 adult when the person:

378 (i) is in a position of trust and confidence, or has a business relationship, with the
379 vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception
380 or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,
381 credit, assets, or other property with the intent to temporarily or permanently deprive the
382 vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of
383 someone other than the vulnerable adult;

384 (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and
385 obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or
386 endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to
387 temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of
388 ~~his~~ the vulnerable adult's property for the benefit of someone other than the vulnerable adult;

389 (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the
390 profit or advantage of someone other than the vulnerable adult;

391 (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship
392 for the profit or advantage of someone other than the vulnerable adult; or

393 (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or
394 furtherance of any criminal activity.

395 (b) A person is guilty of the offense of financial exploitation of a vulnerable adult as
396 follows:

397 (i) if done intentionally or knowingly and the aggregate value of the resources used or

398 the profit made is or exceeds \$5,000, the offense is a second degree felony;

399 (ii) if done intentionally or knowingly and the aggregate value of the resources used or
400 the profit made is less than \$5,000 or cannot be determined, the offense is a third degree
401 felony;

402 (iii) if done recklessly, the offense is a class A misdemeanor; or

403 (iv) if done with criminal negligence, the offense is a class B misdemeanor.

404 [~~5~~] (10) It does not constitute a defense to a prosecution for any violation of this
405 section that the accused did not know the age of the victim.

406 [~~6~~] (11) An adult is not considered abused, neglected, or a vulnerable adult for the
407 reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in
408 lieu of medical care.

409 (12) If an individual, including a caretaker, violates this section by willfully isolating a
410 vulnerable adult, in addition to the penalties under Subsection (2) or (3), the court may require
411 that the individual:

412 (a) undergo appropriate counseling as a condition of the sentence; and

413 (b) pay for the costs of the ordered counseling.